

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DENNIS C. ANDERSON,
BRETT A. ANDERSON and
HAROLD T HJERMSTAD II

Appeal No. 97-2540
Application No. 08/339,558¹

ON BRIEF

Before CALVERT, STAAB, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 23 through 29, which are all of the claims pending in this application.

¹ Application for patent filed November 15, 1994. According to the appellants, the application is a continuation of Application No. 08/128,989, filed September 29, 1993, now U.S. Patent No. 5,390,813.

Appeal No. 97-2540
Application No. 08/339,558

We REVERSE.

BACKGROUND

The appellants' invention relates to a method of recycling. An understanding of the invention can be derived from a reading of exemplary claim 23, which appears in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner as evidence of obviousness under 35 U.S.C. § 103 are:

Papaianni	4,729,489	March 8, 1988
Dziersk et al. (Dziersk)	5,086,917	Feb. 11, 1992

Claims 23 through 29 stand rejected under 35 U.S.C. § 103 as being unpatentable over Papaianni in view of Dziersk.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the § 103 rejection, we make reference to the examiner's answer (Paper No. 14, mailed October 15, 1996) for the examiner's complete reasoning in support of the rejection, and to the appellants' brief (Paper No. 13, filed July 3, 1996) and reply brief (Paper No. 15, filed November 29, 1996) for the appellants' arguments thereagainst.

Appeal No. 97-2540
Application No. 08/339,558

Page 4

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a case of obviousness with respect to claims 23 through 29. Accordingly, we will not sustain the examiner's rejection of claims 23 through 29 under 35 U.S.C. § 103. Our reasoning for this determination follows.

Claims 23 and 27, the only independent claims on appeal, both recite a method comprising, inter alia, (1) molding a recycling container having a pair of integral side-by-side stackable compartments each having side and bottom walls, (2) providing/forming the container with a hollow downwardly opening upright partition between the compartments, (3) forming the partition from a pair of adjacent side walls, (4) forming a handle in an upper portion of the partition, and (5) providing a hand opening in the partition beneath the handle.

Papaianni discloses a compartmentalized trash container. In the particular embodiment shown in Figure 3, the trash container 10 includes three compartments 27, 29 and 31 for selective disposal of waste. Compartment 27 is separated from compartments 29 and 31 by an inverted V-shaped groove 36 extending upwardly from base 12 to a common interior wall 34 and a depending V-shaped groove 38 depending from the top 24 to the common interior wall 34. Papaianni teaches (column 3, lines 36-42) that his configuration permits easy stacking of trash containers 10 since the compartments 27, 29 and 31 of one trash container 10 can be inserted into the identical compartments of another trash container 10 for easy stacking and storage.

Dziersk discloses a utility caddy for transporting cleaning supplies. As shown in Figures 1 and 4, the caddy 10 has compartments 28, 30 separated by partition 20. Partition 20 includes a pair of opposing walls 22, 24 integrally formed with handle 36. The compartments 28, 30 are formed by two pairs of opposing sidewalls 12, 14, bottom walls 26, rounded corners 16 and opposing walls 22, 24 of the partition 20. The opposing walls 22, 24 define a space 44 and opening 46 which facilitates nesting and denesting a stack of such caddies.

In applying the test for obviousness,² we reach the conclusion that the combined teachings of Papaianni and Dziersk would not have been suggestive of the claimed partition. Contrary to the examiner's determination (answer, pp. 5-6), we do not believe that the claimed partition reads on Dziersk's partition 20. In that regard, it is our opinion that when claims 23 and 27 are read as a whole in light of the specification, the claimed handle and hand opening must be located in an upper portion of the partition formed from a pair of adjacent side walls (i.e., the claimed handle and hand opening must be located in an upper portion of the pair of adjacent side walls of the compartments). Thus, the claimed partition must be read on only Dziersk's side walls 22, 24 and not Dziersk's partition 20 (which includes handle 36). Since Dziersk's handle 36 is not located in an upper portion of the pair of adjacent side walls 22, 24 of Dziersk's partition 20, the claimed handle and hand opening located in an upper portion of the pair of adjacent side walls of the compartments does not read on Dziersk's handle 36. Since all the limitations of claims 23 and 27 are not suggested by the

² The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

applied prior art, we cannot sustain the examiner's rejection of
appealed independent claims 23 and 27, or claims 24 through 26,
28 and 29 which depend therefrom, under 35 U.S.C. § 103.

CONCLUSION

To summarize, the decision of the examiner to reject claims
23 through 29 under 35 U.S.C. § 103 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

Appeal No. 97-2540
Application No. 08/339,558

Page 9

JAMES V. HARMON
1000 NORTHSTAR CENTER EAST
608 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402

APPEAL NO. 97-2540 - JUDGE NASE
APPLICATION NO. 08/339,558

APJ NASE

APJ STAAB

APJ CALVERT

DECISION: **REVERSED**

Prepared By: Delores A. Lowe

DRAFT TYPED: 30 Apr 98

FINAL TYPED:

3 MAN CONF